

Putting a house in order

Biswambhar Chatterjee is wary of letting out his property. He has three unoccupied houses in north Calcutta's Shyambazar and Baghbazar areas, but, after fighting endless court battles with tenants who illegally occupied his houses for close to three decades, he has decided to just keep them vacant. "Enough is enough. I don't want to take any more trouble in my old age," Chatterjee, 70, says.

He may change his mind — once the Model Tenancy Bill, 2015, now being readied by the housing and urban poverty alleviation ministry at the Centre, takes final shape. As the draft indicates, the bill aims to set right discrepancies in the 1948 Rent Control Act, which many hold was heavily tilted in favour of tenants.

The law, if and when it comes into effect, will empower landlords to not only charge tenants market rates but also raise the rent periodically and get the premises vacated without getting into long-drawn court battles.

The current Rent Control Act, which varies from state to state, places a cap on house rents and makes it difficult for house owners to ask tenants to leave.

The draft bill mentions no figures or ceilings for rent or its revision, nor minimum or maximum lease periods.

"Under the current act, repossession of the premises was a tedious task. The house owner could take the premises back only if there had been any default from the tenant's side, such as non-payment of rent, sub-letting it without the owner's permission or any kind of misuse of the premises," says Adish C. Aggarwala, senior advocate and chairman, All India Bar Council. "The tenants had a tenancy inheritance right to the property, and under such circumstances, the repossession of the property became difficult."

Under the proposed legislation, house owners can seek re-occupation on grounds of misuse or non-payment by serving a one-month notice. Other notable points include the termination of inheritance of tenancy. This means that the tenan-

A proposed bill seeks to amend tenancy rights, drawing a balance between the rights of homeowners and of their tenants. Some experts tell **Avijit Chatterjee** that it is a win-win situation



cy will expire at the death of the tenant.

The fact that tenancy under most state laws was inheritable, coupled with tedious judicial processes which could last for decades, often deprived owners of their right to enjoy their own property, Aggarwala stresses.

Apart from the benefits to landlords, the new draft bill also has safeguards for tenants. "As per the draft, the rent ceiling will be fixed in consultation with the state government to avoid arbitrary hikes," says Ashwinder Raj Singh, chief executive officer, residential services, Jones Lang LaSalle, the property consultancy firm. "Besides this, landlords won't be able to evict tenant as per their whims and fancies."

He also points out that the security deposit tenants have to fork out will be capped at three times the

monthly rent, which at the moment is charged on an ad hoc basis. "It also mandates the owner to return the security within a month of vacating the premises. Another plus point for tenants is that they can claim a reduction in rent in case of deterioration of services. In short, it's a win-win situation for both house owners and tenants if they play by the rule book."

There are others who feel that the proposed bill will curb unnecessary litigation. "It has provisions to serve a notice prior to three months of the date of termination of the agreement," observes Siddharth Nayak, advocate, Delhi High Court. "This will make the work of the courts much easier since most of the factual compliance shall now appear in black and white, which the rent act did

not specify explicitly."

He feels the best thing about the would-be act is that it proposes to recognise tenancy agreements of less than 12 months as a lease. Under the Rent Control Act, lease agreements have to be of at least 12 months. This led to a practice of landlords making agreements of 11 months so as not to come under the act. "The tenancy period threshold will be left to the two parties. Evacuation shall subsequently be determined on the basis of the duration of the agreement."

What exactly amounts to a breach of an agreement is also specified in the draft act. "It gives a much required basic structure to the tenancy agreements, giving ample scope to modify and customise it according to the requirement of the parties," Nayak says.

It also proposes to minimise in-

terference by house owners. A prior notice has to be served to the tenant by the owner to enter the housing premises. The state acts were mostly silent on these issues.

However, the proposed law will not be binding on the states. "Since land is a state subject, it will be left to the states to decide whether to accept it or not," Singh says. "Given the vote bank scenario, most state governments might not adopt this draft for fear of antagonising tenants who form a major vote bank," notes Singh.

Indeed, a recent proposal by the Maharashtra housing department to amend the state's Rent Control Act faced stiff opposition from activists, prompting the government to withdraw the controversial provision of its draft housing policy, which proposed a massive hike in rents of big properties.

The government, in the draft policy, had mooted a plan to exclude houses larger than 860 square feet in area, and commercial spaces of more than 500 square feet, from the purview of the Maharashtra Rent Control Act, 1999. This would have resulted in an exorbitant increase in rents.

Some people doubt how effective the proposed law can be. According to Prakash Challa, member of the governing council, Confederation of Real Estate Developers' Association of India (Cre-dai), the draft bill envisages registration of tenancy and the creation of special courts to resolve disputes between homeowners and tenants — but special institutional mechanisms do not always work.

"A case in point is the Debt Recovery Tribunal. It has failed to dispose of cases in a timely manner. The effectiveness of the new law depends on the machinery to implement it. The special courts must have a finality or else cases will drag on for years," he says.

Sunil Tyagi, partner, Zeus Law firm, New Delhi, which handles property-related disputes, feels the new law will not be successful if the existing infrastructure is used to dispose of cases. "You need to have additional and specialised judges to handle such cases. Otherwise things will remain the same."